

Appl. No. 10/607,683
Atty. Docket No. 8797R 27
Amdt. dated February 24, 2006
Reply to Office Action of October 11, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1, 4-6, 12 and 15-17 are pending in the present application. No additional claims fee is believed to be due.

Claims 2-3, 7-11 and 13-14 were previously canceled without prejudice.

Claim 1 has been amended to include the transition phrase "consisting essentially of" for certain claimed limitations. Support for this amendment can be found, for example, at page 8, lines 21-29 and with respect to FIG. 1.

Claims 12 and 15 have been cancelled in this amendment.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(e) Over Hirotsu (2004/0102748)

Claims 1, 4-6, 12 and 15-17 have been rejected under 35 USC §102(e) as being unpatentable over Hirotsu, US 2004/0102748. Claim 12 has been canceled. This rejection is traversed.

Applicants submit that the filing date to be accorded to at least Claim 1 is at least December 7, 2001, so that Hirotsu is not properly 35 USC §102(e) prior art. However, to advance prosecution Applicants have amended Claim 1 to be limited by way of the transition phrase "consisting essentially of" to containers having therein only articles of the same absorbency level. Of course, "same absorbency level" is intended to mean absorbency levels as commonly used in commerce. For example, in a package of sanitary napkins marketed and labeled as containing only "Regular" sanitary napkins, each napkin is considered to have the "same" absorbency level of the others even if there might be minute differences between them.

As such, Applicants maintain that Hirotsu does not anticipate the claimed invention.

Accordingly, Applicants submit the claimed invention is novel over Hirotsu and the rejection should be withdrawn.

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**Rejection Under 35 USC §103(a) Over Brisebois et al. U.S. 6,454,095 in view of
Nelson US 3,306,437 and The Box of Tampons at the Museum of Menstruation and
Women's Health**

Claims 1, 4-6, 12 and 15-17 have been rejected under 35 USC §103(a) as being unpatentable over unpatentable Over Brisebois et al. U.S. 6,454,095 in view of Nelson US 3,306,437 and The Box of Tampons at the Museum of Menstruation and Women's Health (Box of Tampons). Claims 12 and 15 have been cancelled.

The Office Action states that Brisebois discloses the claimed limitations except for the signal of the pre-determined absorbent article performance characteristic being displayed as a distinctive color and the container comprises a first window for revealing at least a portion of the thickness of at least one of the absorbent articles and at least a portion of the distinctive color of the wrapper.

Nelson is provide for a teaching of a container having "color coded (26)" and a plurality of inner container (15) having a "color coded (26) corresponding to the color coded of the container . . ."

The Box of Tampons shows a box having a color and a window through which one can see what appear to be wrapped tampons, the wrapper having a similar color as the box.

Applicants submit that due to the claim amendments herein, the claim limitations not shown by Brisebois are:

1. "said signal [indicating absorbency] being displayed as a distinctive color on said wrapper"; and
2. "a first window in said container"; and
3. "said first window revealing at least a portion of said distinctive color".

Applicants traverse the rejection because the Office Action fails to make a *prima facie* case of obviousness. As the Office Action recognizes, it is basic patent law that the rejection of the present invention under 35 U.S.C. §103 must comport with the standard set forth in *Graham v. John Deere Company* 383 US1, 148 USPQ 459 (1966), explained

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in MPEP Section 706. The Supreme Court's guidance in that landmark case, requires that, to establish a *prima facie* case of obviousness, the USPTO must:

- (1) Set forth the differences in the claims over the applied references;
- (2) Set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (3) Explain why the proposed modification would be obvious.

With respect to Step (1), Applicants agree with the Office Action that Brisbois fails to disclose the three elements listed above as recited in Claim 1.

The addition of Nelson fails to remedy the deficiency of Davis. Applicants find no disclosure in Nelson of absorbent articles of any kind, much less wrapped absorbent articles. Nelson appears to be directed to cigarettes and the like. There is no reason to wrap cigarettes in a wrapper to indicate absorbency. One of ordinary skill in the art would find no nexus between the boxed articles of Nelson and the packaged absorbent articles as claimed.

The further addition of Box of Tampons does not remedy the deficiencies of Brisbois and Nelson. Box of Tampons fails to disclose that the color is a signal indicating a level of absorbency of the tampons.

Looking to Step (2), the modification to Brisbois necessary to comport with the instant claims is to at least add signals displayed as distinctive colors on the wrapper of absorbent articles. Neither of these modifications is taught or suggested in Nelson or Box of Tampons. Nelson teaches nothing about wrapped absorbent articles. Box of Tampons teaches nothing about signals indicating absorbency displayed as distinctive colors.

To satisfy Step (3), the Office Action must identify where the prior art provides a motivating suggestion to make the modification proposed in Step (2). Applicants submit that there is no nexus between Brisbois and Nelson, therefore, there can be no suggestion or motivation provided for any modifications to Brisbois from Nelson. The person of ordinary skill in the art of wrapped absorbent products would simply find no disclosure of interest from the package of Nelson.

Further, on of ordinary skill looking to Box of Tampons might be motivated to re-apply the color of Box of Tampons, but there is no suggestion or motivation to make the

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claimed structure of a signal indicating level of absorbency displayed as a distinctive color. Therefore, it is impossible for one of ordinary skill to be motivated to modify
Brisbois by the teaching of Box of Tampons to achieve the claimed invention.

Accordingly, because the Office Action fails to make a *prima facie* case of obviousness in accordance with MPEP 2143, Applicants respectfully request that the rejection be withdrawn and Claim 1 and its dependent claims be allowed.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC 102 and 103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 4-6, and 16-17 is respectfully requested.

Respectfully submitted,

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